

line 29, after "mutant" insert --(SEQ ID NO: 39)--;

line 34, after "5" insert --(SEQ ID NO: 39)--;

line 36, after "mutant" insert --(SEQ ID NO: 39)--.

Page 46, line 3, after "mutant" insert --(SEQ ID NO: 39)--;

line 7, after "mutant" insert --(SEQ ID NO: 39)--;

line 8, after "5" insert --(SEQ ID NO: 39)--;

line 11, after "mutant" insert --(SEQ ID NO: 39)--.

Please insert the enclosed paper copy of the sequence listing.

REMARKS

The amendments to the specification were made in accordance with the requirements set forth in the above-referenced office action to list the appropriate SEQ ID NOS for sequences disclosed in the specification. The amendments do not enter any new matter into the instant application.

The Examiner has required restriction to one of the following groups of claims as required under 35 U.S.C. § 121:

Group I Claims 1-28, 32-34 and 47 drawn to a recombinant allergen and compositions thereof.

Group II Claims 29-31 and 42, drawn to a method of preparing a recombinant allergen and pharmaceutical compositions thereof.

Group III Claims 40, 41 and 43-46, drawn to a method of treating,

vaccinating or preventing allergic reactions in a subject by administering a recombinant allergen or composition thereof.

The Groups are allegedly distinct, each from the other, because of the following reasons:

The inventions of Group I and III are related as product and process of use. The product as claimed can allegedly be used in a materially different process such as immunopurification procedures or diagnostic assays. The inventions of Group II and III are allegedly different methods which require different ingredients and process steps to accomplish either making a recombinant allergen or treating/preventing an allergic reaction in a subject. The inventions of Group I and II are related as process of making a product and the product which is made. The recombinant allergen and pharmaceutical composition thereof can allegedly be made by another process, scanning mutagenesis.

Applicants hereby elect the claims of Group I, claims 1-28, 32-34 and 47, with traverse. In response to the Examiner's requirement to elect a single disclosed species of Group I, Applicants hereby elect the recombinant inhalation allergen protein Betula, in particular Bet v1 from the taxonomic order *Fagales* comprising the Glu45Ser substitution. The reasons for traversal are as follows.

Applicants respectfully disagree with the Examiner's restriction of Groups I, II and III to separate groups. Pursuant to 37 C.F.R. § 1.141(b), "the process of using [a claimed product] may be joined with the claims directed to the product and the process of making the product even though a showing of distinctiveness between the product and the process of using

the product can be made”.

Furthermore, 35 U.S.C. § 103(b) states that (emphasis added):

"(1)a biotechnological process using or resulting in a composition of matter that is novel under 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if-

(A) claims to the process and the composition of matter are contained in either the same application for patent...; and

(B) the composition of matter, and the process at the same time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

(2) A patent issued on a process under paragraph (1)-

(A) shall contain the claims to the composition of matter used in or made by that process, or..

(3) For purposes under paragraph (1), the term “biotechnological process” means-

(A) a process of genetically altering or otherwise inducing a single or multicelled organism to-

(i) express an exogenous nucleotide sequence,
(ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
(iii) express a specific physiological characteristic not naturally associated with said organism;

(B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

(C) a method of using a product produced by a process defined in subparagraph (A) or (B), or a combination of

subparagraphs (A) and (B).

37 C.F.R. § 1.141(b) provides that the claims of Group III, a process of using a product, may be joined with the claims of Group I, directed to the product and the claims of Group II, directed to a process of making the product even though the processes may have been shown to be distinct. 35 U.S.C. § 103(b) provides that the claims of Group II, a process of making a product shall be joined with the claims of Group I, the claimed product.

Therefore, applicants request reconsideration of this restriction requirement. Examination of claims 1-34 and 40-47 is in order.

CONCLUSION

Applicants' response is believed to constitute a complete reply to the Office Action. Early and favorable action on the claims is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul F. Fehlner", written over a horizontal line.

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